

**Johnson, Jere**

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**From:** Jere Johnson [[Johnson.Jere@epamail.epa.gov](mailto:Johnson.Jere@epamail.epa.gov)]  
**Sent:** Wednesday, March 26, 2014 4:22 PM  
**To:** Johnson, Jere  
**Subject:** Fw: ACHP & Virginia City National Landmark District - 2 of 2  
**Attachments:** 2\_\_22\_12\_Ltr\_NPS\_SToothman.doc; EPA\_\_HPA\_CRMS.doc; 2\_\_16\_12\_Ltr\_Elston to EPA.doc

Jere Johnson  
 Remedial Project Manager (SFD 8-2)  
 U.S. Environmental Protection Agency  
 75 Hawthorne Street  
 San Francisco, CA 94105  
 415.972.3094 (direct)  
 415.947.3526 (fax)

If I don't respond to a message, I may be out of the office.  
 Security settings do not permit my "Out of Office" automatic e-mail response to be shared outside of EPA.  
 ----- Forwarded by Jere Johnson/R9/USEPA/US on 03/26/2014 04:22 PM -----

From: Roberta Blank/R9/USEPA/US  
 To: Jere Johnson/R9/USEPA/US@EPA, Joann Asami/R9/USEPA/US@EPA, Eric Esler/R9/USEPA/US@EPA, Elizabeth Cox/R9/USEPA/US@EPA,  
 Date: 03/05/2012 09:37 AM  
 Subject: Fw: ACHP & Virginia City National Landmark District - 2 of 2

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Just got this from John Kennedy/

Roberta Blank  
 Chief, CA/NV Private Sites Section (SFD-8-2)  
 (415) 972-3169  
 ----- Forwarded by Roberta Blank/R9/USEPA/US on 03/05/2012 09:35 AM -----

From: John Kennedy/R9/USEPA/US  
 To: Roberta Blank/R9/USEPA/US@EPA  
 Cc: Michael Montgomery/R9/USEPA/US@EPA, Lily Tavassoli/R9/USEPA/US@EPA  
 Date: 03/05/2012 09:01 AM  
 Subject: Fw: ACHP & Virginia City National Landmark District - 2 of 2

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Forgot to mention we will need to let Matt N. know who the points of contact are since the ACHP is involved and he will act as liaison for the region.

John Kennedy  
 Emergency Response Program  
 Superfund Division (SFD-9)  
 US Environmental Protection Agency, Region 9  
 415.947.4129  
 415.218.7395 cell  
[kennedy.john@epa.gov](mailto:kennedy.john@epa.gov)

----- Forwarded by John Kennedy/R9/USEPA/US on 03/05/2012 08:59 AM -----

From: Matt Nowakowski/DC/USEPA/US  
 To: John Kennedy/R9/USEPA/US@EPA, Debbie Schechter/R9/USEPA/US@EPA, Kathleen Goforth/R9/USEPA/US@EPA

Colleagues

Again, you will also receive notification from the Advisory Council for Historic Preservation.

Matt

Matt Nowakowski, MS, MSHP  
U.S. Environmental Protection Agency  
OECA/OFA/NEPA (NCD) Mail Code 2252A  
1200 Pennsylvania Ave., NW  
Washington, DC 20004  
202-564-7156 direct

*(See attached file: 2\_\_22\_12\_Ltr\_NPS\_SToothman.doc)*[attachment "sect106&Nat'l Landmarks.doc" deleted by Matt Nowakowski/DC/USEPA/US] *(See attached file: 2\_\_16\_12\_Ltr\_Elston to EPA.doc)* *(See attached file: EPA\_\_HPA\_CRMS.doc)*

# DRAFT

February 22, 2012

Stephanie Toothman  
Associate Director Cultural Resources  
National Park Service  
1849 C Street, N.W.  
Washington DC 20240  
[Stephanie\\_Toothman@nps.gov](mailto:Stephanie_Toothman@nps.gov)

RE: Destruction of the Virginia City National Landmark Historic District (VCNLHD) a.k.a. Comstock Historic District (CHDC) – Caused by Extensive Exploratory Drilling and Proposed Open Pit Mine by Comstock Mining Inc. (CMI) a.k.a. Plumb Mining Co.

Dear Stephanie,

I respectfully request upon receipt of this correspondence, you notify the Secretary of Interior to take immediate and appropriate action under the language of 16 USC Sec. 1908 to mitigate or abate the mining and exploration activities currently being conducted by Comstock Mining Inc.

“Whenever the Secretary of the Interior finds on his own motion or upon being notified in writing by an appropriate scientific, historical, or archeological authority, that a district, site, building, structure, or object which has been found to be nationally significant in illustrating natural history or the history of the United States and which has been designated as a natural or historical landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, including exploration for or removal or production of minerals or materials, he shall notify the person conducting such activity and submit a report thereon, including the basis for his finding that such activity may cause irreparable loss or destruction of a national landmark, to the Advisory Council on Historic Preservation, with a request for advice of the Council as to alternative measures that may be taken by the United States **to mitigate or abate such activity.**” Emphasis added.

At present, the threat to the integrity of the VCNLHD is greater than ever. Comstock Mining Inc. (CMI), a publicly traded company (NYSE Amex – LODE), has consolidated a land holding position in the Comstock district that “ totals 6,412 acres, including 892 acres of patented mining claims, and 5,520 acres of unpatented claims administered by the Bureau of Land Management. [From Company web site: [Comstockmining.com](http://Comstockmining.com)]. As of today CMI is actively constructing access roads, drill pads, and has commenced drilling operations within the VCNLHD.

CMI has obtained a Special Use Permit from Storey County, as well as permits from the State of Nevada Department of Conservation and Natural Resources: Division of Air Quality, Division of Mine Reclamation, Division of Water Quality, The Army Corps of Engineer for various aspects of their operation all without review, consideration, or mitigation of any adverse effects which may occur to the cultural resources of the VCNLHD. There has been no SHPO consultation. To complicate and raise the level of concern regarding this circumstance even further, these activities are also taking place within the boundaries of the Carson River Mercury Superfund site.

As I write to you, I can witness men in full “HazMat” suits performing surface disturbance activities on lands in the VCNHLD.

## BACKGROUND

As you are aware “Landmark” status is only applied to properties with exceptional value to the nation as a whole, for the part they played in the history of our country. My direct communication with you anticipates the resolution to the long standing issues that relate to the protection and preservation of our Virginia City National Landmark Historic District (VCNLHD). I perceive apparent administrative failures by numerous federal, state and local regulatory agencies that have led to the loss of countless historic resources over the last 30 years. These failures continue to hamper effective management of the VCNLHD and are contrary to the intent of Congress.

The VCNLHD was recognized as one of America’s preeminent historic mining districts designated on July 4, 1961 under Historic Sites Act of 1935. Subsequently the VCNLHD was included in the National Register of Historic Places under the provisions of the National Historic Preservation Act of 1966 as amended. “Landmark” status is only applied to properties with exceptional value to the nation as a whole, for the part they played in the history of our country.

In the late 1970’s and early 1980’s the use of contemporary open pit mining technologies were applied to numerous patented claims by small mining companies on lands within the VCNLHD. These activities created significant land disturbances which caused the National Parks Service (NPS) to declare the district as “endangered”. This endangered status has persisted to the present.

In 1988, a draft report (some 40 pages in length) was prepared by Leo R. Barker, Historical Archeologist for the NPS Western Region, San Francisco and forwarded to the Nevada State Historic Preservation Officer for review and comment. The report was prepared in accordance with Section 9 (a) of the Mining in the National Parks Act of 1976 (P.L. 94-429), Section 8 of the National Park System General Authorities Act of 1976 and the provisions of the National Historic Landmark Program at 36 CFR 65. The abstract reads as follows:

“The VCNHLD, recognized as one of America’s preeminent historic mining districts since its designation ..., is losing its historic character and physical integrity. Threats to the integrity of the Landmark have resulted from the cumulative effect of several factors. Applicable legal mandates and regulatory guidelines have been inadequate to ensure conservation of the range of historic properties that contribute to the Landmark. Historic resources within the district have been incompletely recognized, inventoried and evaluated. The absence of

preservation review processes have impaired efforts to identify and mitigate adverse effects resulting from contemporary mining and other land altering uses of the Landmark. Planning to consider all potentially contributing resources, and by a failure to plan for the Landmark in its entirety.

In accordance with Section 9 (a) of P.L. 94-429, it is recommended that the Secretary of the Interior formally request the assistance of the Advisory Council on Historic Preservation (ACHP) in determining alternative methods to mitigate or abate the plight of this National Historic Landmark. The following report presents basic information regarding the current status of the Landmark and offers recommendations for the Advisory Council's consideration."

The 40 page "Draft" report contains narratives, conclusions and recommendations regarding Investigative Methods, Legal Mandates and Process, Identification of Resources, Evaluation of Resources, Resources Preservation and Treatment, Mining and other projects 1978-1988, and Conclusions and Recommendations. The report concludes with 15 distinct "comments and recommendations regarding the preservation of the VCNLHD". It is unknown if the Nevada State Historic Preservation Officer (SHPO) prepared a response to the draft or if a "Final" report was prepared based on this draft. It is also unknown if the ACHP ever received a formal request from the Sect. of Interior to become involved. It is known that no substantial action has been taken by the Nevada Office of Historic Preservation to implement the comments and recommendations contained in the report.

Regarding the Carson River Superfund Site (CRMS), the EPA has given Nevada Department of Environmental Protection (NDEP) responsibility for managing the CRMS via a 1995 Record of Decision (ROD) (EPA/ROD/R09-95/134 1995) between the Environmental Protection Agency (EPA) and NDEP, but EPA remains involved with decision-making.

EPA's Section 106 responsibilities in the CRMS are made clear in 36CFR800.16(y) and in the preamble to the 2004 revision of 36CFR800 (John M. Fowler, Executive Director, Advisory Council for Historic Preservation 2004:13-14):

"...the Federal agency approval and/or funding of such State delegated programs does require Section 106 compliance by the Federal agency, as such programs are "undertakings" receiving Federal approval and/or Federal funding. Accordingly, Federal agencies need to comply with their Section 106 responsibilities regarding such programs before an approval and/or funding decision on them."

The EPA/NDEP program in the CRMS has *never been in compliance with Section 106*, even though the 1995 ROD (Action Requirements, page 34) references consideration of historic properties provided by the Archaeological and Historic Preservation Act (40CFR6.301(b) and (c)). *The ROD contains no SOP or references any provision such as a PA, for meeting this requirement.* The ROD fails to acknowledge special requirements for protecting National Historic Land Marks (36CFR800.10). Indeed, the ROD states, "Given the limited scope and area of the selected remedial action, EPA believes that it is unlikely that any historical property or archaeological remains will be encountered."

It is difficult to understand how historical properties and archaeological remains could be avoided in the CRMS since both the Long Term Response and Sampling Plan (LTRSP) and the CMI Sampling and Analysis Plan (SAP) rely on archaeological surveys allegedly designed to identify historic mill sites known to have employed mercury in gold and silver recovery. Such sites are to undergo surface and subsurface sampling.

I thank you in advance for your consideration and prompt attention to this matter.

Larry Wahrenbrock  
P.O. Box 246  
Silver City, NV 89428  
Email: [nevadabead@aol.com](mailto:nevadabead@aol.com)  
1-775-847-7302

<http://yosemite.epa.gov/r9/sfund/r9sfdocw.nsf/vwsoalphabetic/Carson+River+Mercury+Site?OpenDocument>

Carson River Mercury Site

EPA #: NVD980813646

State: Nevada(NV)

County: Lyon, Storey, and Churchill

City:

Congressional District: 02

Other Names: Other Names:

Description and History

### ***NPL Listing History***

**NPL Status: Final**

**Proposed Date: 10/26/89**

**Final Date: 08/30/90**

**Deleted Date:**

The Carson River Mercury Site includes mercury-contaminated soils at former mill sites, mercury contamination in waterways adjacent to the mill sites, and mercury contamination in sediments, fish and wildlife over more than a 50 mile length of the Carson River, beginning near Carson City, Nevada and extending downstream to the Lahontan Valley. Contamination at the site is a legacy of the Comstock mining era of the late 1800s, when mercury was imported to the area for processing of gold and silver ore. Ore mined from the Comstock Lode was transported to mill sites, where it was crushed and mixed with mercury to amalgamate the precious metals. The mills were located in Virginia City, Silver City, Gold Hill, Dayton, Six Mile Canyon, Gold Canyon, and adjacent to the Carson River between New Empire and Dayton. During the mining era, an estimated 7,500 tons of mercury were discharged into the Carson River drainage, primarily in the form of mercury-contaminated tailings.

Today, the mercury is in the sediments and adjacent flood plain of the Carson River and in the sediments of Lahontan Reservoir, Carson Lake, Stillwater Wildlife Refuge, and Indian Lakes. Nevada State Health Division advisories recommend limited or no consumption of fish and ducks at the Site due to high levels of mercury. In addition, tailings with elevated mercury levels are still present at and around the historic mill sites, particularly in Six Mile Canyon. EPA, the U.S. Geological Survey, the U.S. Fish and Wildlife Service, the Nevada Division of Environmental Protection (NDEP), University of Nevada researchers, and others have carried out studies to determine the extent of contamination, evaluate the human health and ecological risks, and

better understand the processes that govern the movement and toxicity of the mercury. To better manage the site investigation and cleanup, EPA has established two Operable Units (OU) for the site. OU 1 consists of the old mill sites and related tailings. OU2 consists of the Carson River from the area of New Empire to its terminus in the Carson Sink

.....

To comply with the National Historic Preservation Act, and avoid or minimize adverse effects to significant archaeological artifacts or features during the cleanup, EPA hired archaeologists and other specialists to inventory and evaluate archaeological remains, test for subsurface archaeological deposits, monitor excavation activities, and analyze and document archaeological discoveries. The results of the investigations are summarized in a two volume report titled "Historical Archaeology of the Carson River Mercury Site, Dayton and Silver City, Nevada" (April 2001).

During cleanup work in one of the contaminated areas, the archaeologist monitoring excavation observed large timbers later identified as part of the foundation of the 19th century mill building. The surrounding soil, as well as the timbers themselves, contained small pools of elemental mercury. This discovery resulted in a seven month suspension in the cleanup as arrangements were made to handle the pools of mercury and the "high mercury" soils. The cleanup work is described in detail in the "Remedial Action Report, Carson River Mercury Site" (September 2000). Additionally, the cleanup work also includes the development of a "Long Term Sampling and Response Plan" to address risks in undeveloped, uncharacterized areas with elevated levels of mercury.

The Long Term Sampling and Response Plan ("the Plan") describes EPA and the Nevada Division of Environmental Protection (NDEP) efforts to address risks to public health and the environment from mercury-contaminated soils at the CRMS in Lyon County. The Plan addresses risks that could result from long-term direct contact with soils having elevated levels of mercury. Long-term contact is most likely in new, uncharacterized, residential development settings. NDEP has worked on more than 70 development/project proposals, required analyses of soil samples for mercury at approximately 26 developments, and worked with the developer on mitigation at approximately two developments. Mitigation involved covering or capping contaminated soils. EPA's role has been to provide technical assistance to NDEP and occasionally to work directly with developers and their consultants.



# Robert G. Elston

## Cultural Resources Consultant

Error! Reference source not found. • Error! Reference source not found., Error! Reference source not found. Error! Reference source not found. • Phone: Error! Reference source not found. • Fax: 775-847-0699  
E-Mail: Error! Reference source not found. Web: [www.sc-resistance.com](http://www.sc-resistance.com)

February 16, 2010

Mr. Michael M. Montgomery  
Assistant Director, Superfund Division  
United States Environmental Protection Agency, Region IX  
75 Hawthorne Street  
San Francisco, California 94105

Dear Mr. Montgomery:

This letter is to request an immediate halt to the mining exploration activities of Comstock Mining Inc. currently underway within the Carson River Mercury Superfund Site (CRMS) that largely coincides with the endangered Virginia City National Historic Landmark District (VCNLHD).

In particular, I am referring to the Sampling and Analysis Plan (SAP) that is integral to the reclamation permit granted to CMI by Nevada Department of Environmental Protection (NDEP) (permit #0315) for a massive exploration project within the CRMS, and within archaeologically sensitive areas of the VCNLHD. The SAP is in violation of Section 106 the National Historic Preservation Act of 1966 as provided in 36CFR800.

In fact, the Long Term Sampling and Response Plan (LTSRP) implemented in the 1995 Record of Decision (ROD) (EPA/ROD/R09-95/134 1995) between the Environmental Protection Agency (EPA) and NDEP is also not in compliance with Section 106 and should be but into abeyance until the ROD is revised and a programmatic agreement (PA) as provided by 36CFR800.14(b), implemented between Nevada State Historic Preservation Office (SHPO), NDEP and relevant Federal agencies including EPA, National Park Service (NPS), Bureau of Land Management (BLM), and United States Army Corps of Engineers (USACE).

The EPA has given Nevada Department of Environmental Protection (NDEP) responsibility for managing the CRMS via the 1995 ROD, but EPA remains involved with decision-making and coordination as indicated by your letter to Daan Eggenberger of February 7, 2012. EPA's Section 106 responsibilities in the CRMS are made clear in 36CFR800.16(y) and in the preamble to the 2004 revision of 36CFR800 (John M. Fowler, Executive Director, Advisory Council for Historic Preservation 2004:13-14):

“...the Federal agency approval and/or funding of such State delegated programs does require Section 106 compliance by the Federal agency, as such programs are "undertakings" receiving Federal approval and/or Federal funding. Accordingly, Federal agencies need to comply with their Section 106 responsibilities regarding such programs before an approval and/or funding decision on them.”

Thus, the LTSRP and various permits for activities in the CRMS issued by NDEP are federal undertakings. This seems to have been recognized by NDEP in a November 2011 communication with the Deputy State Historic Preservation Officer in which NDEP admitted the need for a PA regarding Section 106 and proposed developing one.

The EPA/NDEP program in the CRMS has *never been in compliance with Section 106*, even though the 1995 ROD (Action Requirements, page 34) references consideration of historic properties provided by the Archaeological and Historic Preservation Act (40CFR6.301(b) and (c)). *The ROD contains no SOP or references any provision such as a PA, for meeting this requirement.* The ROD fails to acknowledge special

requirements for protecting National Historic Land Marks (36CFR800.10). Indeed, the ROD states, “Given the limited scope and area of the selected remedial action, EPA believes that it is unlikely that any historical property or archaeological remains will be encountered.”

It is difficult to understand how historical properties and archaeological remains could be avoided in the CRMS since both the LTRSP and the CMI SAP rely on archaeological surveys allegedly designed to identify historic mill sites known to have employed mercury in gold and silver recovery. Such sites are to undergo surface and subsurface sampling. If contaminants are present, the site will either be covered or the contaminated soil will be removed.

CMI’s Mine Exploration and Reclamation permit which includes the SAP granted by NDEP (ongoing as I write this) allows hundreds of surface and subsurface samples to be taken from potentially significant historic sites and other points in the landscape that may contribute to the importance and integrity of the VCNLHD. Additionally, the Permit allows for the construction of exploratory drill pads, access roads, and sumps for a total surface disturbance of 19.75 acres. However, sampling is being done without an explicit protocol for excavating the samples, dealing with any subsurface artifacts or cultural features that might be encountered, curating such artifacts, and reporting on such finds to Nevada State Historic Preservation Office (SHPO), or Federal agencies, such as BLM, NPS, or USACE

Thus, both sampling and remediation in CRMS could provide significant adverse effects (36CFR800.5(2) to historical and archaeological sites. All such sites within the landmark must be considered potentially significant historic properties, but it appears that neither EPA nor NDEP has ever asked for consultation or submitted archaeological survey reports or site records to Nevada SHPO. Thus, SHPO, the Advisory Council for Historic Preservation (ACHP), or other interested parties have not had the opportunity, as provided for in Section 106, to comment on these undertakings.

The VCNLHD has exceptional value to the nation for the part it played in U.S. history. Cumulative effects of surface mining activities have caused the NPS to declare the district as “endangered.” Thus, it behooves state and Federal agencies with responsibility for permitting exploration and mining activities to do all in their power to protect historic sites and landscapes in the VCNLHD.

In conclusion, I urge you to immediately exercise the oversight authority of EPA in administration of the CRMS to suspend the SAP and LTRSP until such time that the Nevada SHPO and ACHP have been formally consulted, the public given a chance to comment, and a PA addressing the problems and deficiencies outlined above has been implemented.

Sincerely,

Robert G. Elston, Ph.D.

Cc: Jere Johnson, Remedial Project Manager EPA District 9; Jeff Collins, Program Coordinator for Bureau of Corrective Actions, NDEP; Ronald James, Nevada SHPO; Rebecca Palmer, Deputy SHPO; Louise Dunford Brodnitz, Office of Federal Agency Programs ACHP; Elaine Jackson-Retondo, National Historic Landmarks Manager NPS; Jeff Durbin, Sect. 106 Compliance Officer NPS; Alan Bittner, Field Manager Sierra Front Field Office BLM; Kristine Hanson, USACE